the suspicious character in question has committed some crime. "The struggle to keep the peace and put down crime is a hard one everywhere. It requires a strong arm that cannot show too punctilious a regard for theoretical rights when prompt decisions have to be made and equally prompt action taken. The thieves and gun men have got to be driven out. Suspicious characters have got to be locked up. Somehow or other a record must be kept of professional criminals and persons likely to be active in law-breaking." Hence, in Mr. Train's opinion, the peace officer is often justified socially in making arrests which are not legally authorized: and he ought not to give too much consideration to the right of personal liberty, lest "the native hue of resolution is sicklied o'er with the pale cast of thought."

Francis M. Burdick.

AN ELEMENTARY TREATISE ON THE JURISDICTION AND PROCEDURE OF THE FEDERAL COURTS. By John C. Rose. Baltimore: King Brothers, 1915. pp. xxx, 406.

This book, which originated in a lecture course conducted by the author at the Law School of the University of Maryland, amply fulfills its modest purpose, which is, in Judge Rose's own words, "to aid those who know little or nothing as to the jurisdiction and proceedings of the Federal Courts, and who would like to learn the fundamental rules concerning them." That there are many such persons practicing at the Bar of every state is clear, admission to practice does not predicate a knowledge of Federal jurisdiction, and numerous lawyers are apt to acquire the sort of practice which will not lead them into the Federal Courts at all. But in addition to this small number whose practice lies almost entirely in the Courts of whose bench the author has long been a member, there is a considerable quantity of practitioners whose work requires, from time to time, a knowledge of the subject with which this book deals. To all such persons Judge Rose's work should prove of great service. Its coherency of treatment is especially commendable. The subject is inherently difficult of presentation, and the danger to be avoided in an effort of this sort, is the descent into particularism. In this respect the author has been singularly successful.

Garrard Glenn.

INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION. By A. V. Dicey, K. C., Hon. D. C. L. Eighth Edition. London: Macmillan & Co. 1915. pp. cv, 577.

A new edition of the *Introduction to the Study of the Law of the Constitution,* when put forth by its venerable author as his final revision of a treatise which first appeared in 1885, is notable. Largely because of this element of finality, the method of piece-meal amendment of earlier revisions has been abandoned. Substantially, the body of the book is a reprint of the Seventh Edition (1908); an introduction has been added, however, in which Professor Dicey compares the English constitution as it stood in 1884 and in 1914 and attempts to evaluate certain recent constitutional tendencies. This fact lightens somewhat the task of the reviewer, who may properly confine his attention to the introduction. The importance of Professor Dicey's contribution here is not to be estimated by its physical proportions. The author's genius for compression is well known to his readers;

besides, for all the congestion of our libraries, one's central thoughts are quickly told. Within these one hundred pages we are given a well-considered, valedictory judgment of young "democratic England" by one of the most illustrious students of the English constitution.

In reviewing constitutional changes since 1884, Professor Dicey, with his usual care for outline, follows the arrangement in the body of the book. Readers will recall that he treats his subject there under three heads: the legal sovereignity of Parliament, as the dominant characteristic of English political institutions; the rule of law, which he shows to be a related feature; and the ultimate dependence of the conventions upon the law of the constitution. Viewing these broadly, he finds no revolutionary changes. The sovereignity of Parliament, as a legal doctrine, has not been altered by the Parliament Act of 1911 (which deprived the House of Lords of all legislative power with reference to Money Bills and enabled the Commons, by passing any bill in three successive sessions, to over-ride the veto of the upper chamber). Momentous as are the probable reactions of the Parliament Act upon the conventions of the constitution, particularly in tightening the grip of the Party Machine, it merely puts the center of gravity of Parliament more completely within the House of Commons and leaves Parliament sovereign. Nor has the scope of this sovereignty been contracted by the recent development of the older idea of colonial self-government, in the concession to the Dominions of absolute local autonomy, so far as is consistent with loyalty to the Empire. Indeed, as offsetting the quiescence of Parliamentary intervention, Professor Dicey points to a new spirit of Imperial solidarity, which has replaced the indifference of an earlier generation toward secession from the Empire.

As for the rule of law, Professor Dicey can still flatter England that it remains a distinctive characteristic of the constitution. The reader is not surprised, however, that the author should shake his head sadly over the lawlessness of the day and the growing distrust of judges and courts, which he attributes in part to the embarrassment of Democracy in dealing firmly where differences of opinion are involved, and in part to the misdevelopment of party government. He notes a further approximation of the "official law" of England and the *droit administratif* of France. On the one hand, socialistic tendencies in English legislation, by such enactments as the National Insurance Acts of 1911 and 1913, are imposing judicial functions upon administrative officers. Thus English law is being "officialised" (by the same force, we may note which is helping to break down the traditional separation of powers in the United States). On the other hand, the "judicialisation" of the *droit administratif* has continued. This is evidenced, for example, by the further emancipation from the Cabinet of the Conflict Court (upon which depends the relation between the judicial courts and the *Conseil d'Etat,* or great administrative court). Nevertheless, the gulf between the genius of Anglo-Saxon and of Continental jurisprudence has not been bridged.

Turning to his third head, Professor Dicey still insists upon his doctrine that the conventions of the English constitution owe their sanction to the supremacy of law. He observes the appearance of certain new conventions since 1884; notably, the understanding that a ministry which is defeated at a general election must resign, the development which has increased the dominance of the Premier within the Cabinet and which has secured rules of procedure calculated to crush opposition in the House, and a new moral influence exercisable by the Crown as

the sole representative of the Empire. Moreover, certain preexisting understandings have become, through legislation, "enacted conventions". The most important of these are related to the Parliament Act of 1911, which may be regarded as a step toward an enacted constitution. Professor Dicey maintains that the general tendency of these new conventions is to increase the rigidity of the party system, to make the English executive "more and more the representative of a party rather than the guide of the country", and to entrench, within the full legal life-time of a Parliament, any ministry which can somehow command a majority.

In the latter part of his introduction, Professor Dicey examines four constitutional ideas, which may be regarded as new because the wide-spread interest in them is hardly older than the century. These are woman suffrage, proportional representation, the referendum, and federalism. His treatment is exceedingly compressed but not at all cursory. He is content for the most part to balance one or two of the leading arguments pro and con, and often his personal judgment is merely implied, but he never leaves the reader in doubt as to his standards of value. He finds evidence in the agitation for the Parliamentary suffrage for women of a recrudescence of the doctrine of natural rights, which can perhaps be attributed in part to the decline of utilitarianism. The advocates of woman suffrage are criticised because they fail to recognize that the franchise is not a right but the obligation to discharge a public duty, and the criterion which determines upon whom this obligation should be imposed is the general welfare. Professor Dicey has common ground for his treatment of proportional representation and the referendum in his abhorrence (already indicated) of the present tendencies of party government in England. Some scheme of proportional representation is desirable in so far as it can promise to frame a House of Commons which will represent more nearly the opinion of the nation; but the danger of such a scheme is that it may defeat this very purpose, by placing a further premium upon party mechanism and, worse, encouraging the formation of small parliamentary groups. Lord Morley has recently observed the tendency for such groups to develope. Professor Dicey finds that this tendency threatens to disturb wholly the bi-party system, so inherent in British constitutionalism. He cites the passage of the Government of Ireland Act in 1914 as an illustration of the misrepresentation of the nation through the log-rolling of party groups. The referendum permits the separation of issues, and it is to be urged chiefly because it promises some relief from the abuses of the party system (or does not Professor Dicey really mean the Liberal Party?) "It is probable, if not certain," he says, "that anyone who realises the extent to which parliamentary "government itself is losing credit from its too close connection with "the increasing power of the party machine, will hold with myself that "the referendum judiciously used may, at any rate in the case of "England, by checking the omnipotence of partisanship, revive faith "in that parliamentary government which has been the glory of English "constitutional history." Professor Dicey has pointed out very truly that popular legislation is not necessarily wise legislation; but, with the rest of present-day conservatives, he yields to no one in his concern lest Parliament shall misrepresent the people.

Federalism, as a solution of the imperial problem, is emphatically condemned. An analysis reveals, besides inherent weaknesses in federalism generally, grave practical difficulties in the application of such a system to the British Empire. Professor Dicey's predilections, in

this as indeed in all matters, are indicated in the following passage: " . . . I am a student of the British constitution; my unhesi- "tating conviction is that the constitution of the Empire ought to "develop, as it is actually developing, in the same way in which "grew up the constitution of England. The relation between England "and the Dominions . . . need not be developed by arduous feats "of legislation. It should grow under the influence of reasonable "understandings and of fair customs." This hope seemed nearer realization because it was written after the outbreak of the war, to which, it may be added, Professor Dicey makes eloquent reference, in the tone familiar to American readers of English pamphlet literature.

Enough has been said to indicate the interest of the Eighth Edition of *The Law of the Constitution* to all students of government.

A. W. M.

BOOKS RECEIVED.

THE HISTORY OF SOCIAL LEGISLATION IN IOWA. By JOHN E. BRIGGS. Iowa City: STATE HISTORICAL SOCIETY OF IOWA. 1915. pp. xiv, 444.

THE HISTORY OF POOR RELIEF LEGISLATION IN IOWA. By JOHN R. GILLIN. Iowa City: STATE HISTORICAL SOCIETY OF IOWA. 1915. pp. xiv, 404.

WAR OBVIATED BY AN INTERNATIONAL POLICE, A Series of Essays written in Different Countries. The Hague: M. NIJHOFF. 1915. pp. iv, 223.

INCOMES. By SCOTT NEARING. New York: THE MACMILLAN CO. 1915. pp. vii, 238.

THE ACT TO REGULATE COMMERCE CONSTRUED BY THE SUPREME COURT. By HERBERT BRUCE FULLER. Washington: JOHN BYRNE & Co. 1915. pp. x, 585.

SWISS CIVIL CODE. By R. P. SHICK. Boston: THE BOSTON BOOK CO. 1915. pp. xxxii, 262.

GERMAN LEGISLATION FOR THE OCCUPIED TERRITORIES OF BELGIUM. Second Series. By CHAS. H. HUBERICH and A. NICOL-SPEYER. The Hague: MARTINUS NIJHOFF. 1915. pp. 165.

BRACTON DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE. By GEO. E. WOODBINE. New Haven: YALE UNIV. PRESS. 1915. pp. xii, 422.

PATHOLOGICAL LYING, ACCUSATION, AND SWINDLING. Wm. Healy, M. D. Boston: LITTLE, BROWN & Co. 1915. pp. x, 286.

THE SIMPLIFICATION OF THE CIVIL PRACTICE OF NEW YORK. Vol. III. Report of the Board of Statutory Consolidation. Albany: J. B. LYON CO. 1915. pp. 638.

DAS ENGLISCHE PRISENRECHT. By CHAS. HENRY HUBERICH. Berlin: CARL HEYMANN'S VERLAG. 1915. pp. viii, 135.

LAW OF WILLS, EXECUTORS AND ADMINISTRATORS: 2 Vol. 5th edition. By JAMES SCHOULER, LL. D. Albany: MATTHEW, BENDER & Co. 1915. pp. lxxxxiii, 1735.

TRESPASSES AND INJURIES BY ANIMALS. By W. N. ROBSON. Cambridge: UNIVERSITY PRESS. 1915. pp. vii, 180.